

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VALENTIN TAPIA, ROMULO RICANO
BALDERAS, and EUFEMIA CASTILLO,
*individually and on behalf of others similarly
situated,*

Index No. 14-cv-8529 (AJN)

Plaintiffs,

-against-

BLCH 3RD AVE. LLC. (d/b/a BRICK LANE
CURRY HOUSE), AJIT BAINS and
SATINDER SHARMA,

Defendants.

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PLAINTIFFS' POST-TRIAL REPLY MEMORANDUM OF LAW

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Plaintiffs Valentin Tapia, Romulo Ricano Balderas, and Eufemia Castillo, by their attorneys Michael Faillace & Associates, P.C., submit this post-trial reply memorandum of law.

PRELIMINARY STATEMENT

Defendants failed to provide their own post-trial memorandum of law in this matter. Defendants, likewise, have offered no case law or statutory authority in any of their post-trial submissions. Accordingly, they have failed to substantiate their positions with any legal authority. Plaintiffs therefore respectfully request the Court adopt Plaintiffs' initial Post-Trial Memorandum of Law in its entirety as unopposed by Defendants. Based on the testimony and evidence at trial, the Court should reach the following conclusions (previously briefed in Plaintiffs' Post-Trial Memorandum of Law):

- The Court has subject matter jurisdiction of this action.
- The claims arising under New York law are so related to the Fair Labor Standards Act ("FLSA") claims that they form part of the same case or controversy, and are therefore within the supplemental jurisdiction of the court
- Plaintiffs were not eligible to be paid at a lower tip-credit minimum wage rate, under the FLSA and New York Labor Law ("NYLL").
- Defendants did not provide adequate notice to employees of its intention to pay them at a tip-credit minimum wage rate, and therefore it was unlawful under the FLSA and NYLL to pay Plaintiffs at a lower tip-credit minimum wage rate.
- Throughout Plaintiffs' employment, Defendants failed to pay all Plaintiffs spread of hours pay on days when their spread of hours worked exceeded 10 hours, in violation of the NYLL.
- Defendants did not provide Plaintiffs with adequate wage notices, in violation of NYLL §195(1).

- Defendants did not provide Plaintiffs with accurate wage statements, in violation of NYLL §195(3).
- BLCH 3rd Ave. LLC. (d/b/a Brick Lane Curry House) and Satinder Sharma were employers of Plaintiffs under the FLSA and NYLL.
- Defendants acted willfully under the meaning of 29 U.S.C. §255, and as a result, a three-year statute of limitations applies to Plaintiffs' claims.
- Defendants' actions were not in good faith, and therefore Plaintiffs are entitled to liquidated damages under the FLSA and NYLL.

CONCLUSION

Wherefore, it is respectfully requested that Plaintiffs be granted judgment against Defendants, in an amount to be determined in the subsequent liability phase.

Dated: June 15, 2016

By: /s/ Raquel A. Gutierrez
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